



Reprinted
March 30, 2007

ENGROSSED SENATE BILL No. 9

DIGEST OF SB 9 (Updated March 29, 2007 4:17 pm - DI 75)

Citations Affected: IC 22-11.

Synopsis: Fireworks regulations. Provides that counties and municipalities may adopt ordinances to regulate the time and location for the use, ignition, or discharge of fireworks. Provides that a fireworks use ordinance may not limit the use of fireworks on certain days during certain times of the day. Appropriates to the department of homeland security an amount equal to the amount of public safety fees collected on the sale of fireworks in Indiana for the following purposes: (1) 50% of the amount appropriated for grants to all volunteer fire departments; (2) 25% of the amount appropriated for public safety providers or advanced training programs; and (3) 25% of the amount appropriated to pay various costs related to disaster relief. Makes a conforming amendment.

Effective: Upon passage.

**Heinold, Landske, Becker,
Lawson C, Howard, Mrvan, Zakas,
Hershman, Broden, Lanane**
(HOUSE SPONSORS — MOSES, SOLIDAY, POND)

January 8, 2007, read first time and referred to Committee on Local Government and Elections.

January 25, 2007, amended, reported favorably — Do Pass.

February 6, 2007, read second time, amended, ordered engrossed.

February 7, 2007, engrossed.

February 8, 2007, read third time, passed. Yeas 37, nays 9.

HOUSE ACTION

February 27, 2007, read first time and referred to Committee on Local Government.

March 26, 2007, amended, reported — Do Pass.

March 29, 2007, read second time, amended, ordered engrossed.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 9

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-11-14-1, AS AMENDED BY P.L.187-2006,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 1. As used in this chapter and IC 22-11-14.5:
4 "Auto burglar alarm" means a tube that contains pyrotechnic
5 composition that produces a loud whistle or smoke when ignited. A
6 small quantity of explosive, not exceeding fifty (50) milligrams, may
7 also be used to produce a small report. A squib is used to ignite the
8 device.
9 "Booby trap" means a small tube with string protruding from both
10 ends, similar to a party popper in design. The ends of the string are
11 pulled to ignite the friction sensitive composition, producing a small
12 report.
13 "Chaser" means a device, containing fifty (50) milligrams or less of
14 explosive composition, that consists of a small paper or cardboard tube
15 that travels along the ground upon ignition. A whistling effect is often
16 produced, and a small noise may be produced.
17 "Cigarette load" means a small wooden peg that has been coated

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with a small quantity of explosive composition. Upon ignition of a cigarette containing one (1) of the pegs, a small report is produced.

"Consumer firework" means a small firework that is designed primarily to produce visible effects by combustion, and that is required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR 1507. The term also includes some small devices designed to produce an audible effect, such as whistling devices, ground devices containing fifty (50) milligrams or less of explosive composition, and aerial devices containing one hundred thirty (130) milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect. Consumer fireworks:

(1) include:

(A) aerial devices, which include sky rockets, missile type rockets, helicopter or aerial spinners, roman candles, mines, and shells;

(B) ground audible devices, which include firecrackers, salutes, and chasers; and

(C) firework devices containing combinations of the effects described in clauses (A) and (B); and

(2) do not include the items referenced in section 8(a) of this chapter.

"Cone fountain" means a cardboard or heavy paper cone which contains up to fifty (50) grams of pyrotechnic composition, and which produces the same effect as a cylindrical fountain.

"Cylindrical fountain" means a cylindrical tube not exceeding three-quarters (3/4) inch in inside diameter and containing up to seventy-five (75) grams of pyrotechnic composition. Fountains produce a shower of color and sparks upon ignition, and sometimes a whistling effect. Cylindrical fountains may contain a spike to be inserted in the ground (spike fountain), a wooden or plastic base to be placed on the ground (base fountain), or a wooden handle or cardboard handle for items designed to be hand held (handle fountain).

"Dipped stick" or "wire sparkler" means a stick or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition does not exceed one hundred (100) grams per item. Those devices containing chlorate or perchlorate salts do not exceed five (5) grams in total composition per item. Wire sparklers that contain no magnesium and that contain less than one hundred (100) grams of composition per item are not included in the

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category of consumer fireworks.

"Distributor" means a person who sells fireworks to wholesalers and retailers for resale.

"Explosive composition" means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited.

"Firecracker" or "salute" is a device that consists of a small paper wrapped or cardboard tube containing not more than fifty (50) milligrams of pyrotechnic composition and that produces, upon ignition, noise, accompanied by a flash of light.

"Firework" means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, items referenced in section 8(a) of this chapter, and special fireworks. The following items are excluded from the definition of fireworks:

- (1) Model rockets.
- (2) Toy pistol caps.
- (3) Emergency signal flares.
- (4) Matches.
- (5) Fixed ammunition for firearms.
- (6) Ammunition components intended for use in firearms, muzzle loading cannons, or small arms.
- (7) Shells, cartridges, and primers for use in firearms, muzzle loading cannons, or small arms.
- (8) Indoor pyrotechnics special effects material.
- (9) M-80s, cherry bombs, silver salutes, and any device banned by the federal government.

"Flitter sparkler" means a narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. These devices do not use a fuse for ignition, but rather are ignited by igniting the paper at one (1) end of the tube.

"Ground spinner" means a small spinning device that is similar to wheels in design and effect when placed on the ground and ignited, and that produces a shower of sparks and color when spinning.

"Helicopter" or "aerial spinner" is a spinning device:

- (1) that consists of a tube up to one-half (1/2) inch in inside diameter and that contains up to twenty (20) grams of pyrotechnic composition;
- (2) to which some type of propeller or blade device is attached; and
- (3) that lifts into the air upon ignition, producing a visible or audible effect at the height of flight.

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"Illuminating torch" means a cylindrical tube that:

- (1) contains up to one hundred (100) grams of pyrotechnic composition;
- (2) produces, upon ignition, a colored fire; and
- (3) is either a spike, base, or handle type device.

"Importer" means:

- (1) a person who imports fireworks from a foreign country; or
- (2) a person who brings or causes fireworks to be brought within this state for subsequent sale.

"Indoor pyrotechnics special effects material" means a chemical material that is clearly labeled by the manufacturer as suitable for indoor use (as provided in National Fire Protection Association Standard 1126 (2001 edition)).

"Interstate wholesaler" means a person who is engaged in interstate commerce selling fireworks.

"Manufacturer" means a person engaged in the manufacture of fireworks.

"Mine" or "shell" means a device that:

- (1) consists of a heavy cardboard or paper tube up to two and one-half (2 1/2) inches in inside diameter, to which a wooden or plastic base is attached;
- (2) contains up to forty (40) grams of pyrotechnic composition; and
- (3) propels, upon ignition, stars (pellets of pressed pyrotechnic composition that burn with bright color), whistles, parachutes, or combinations thereof, with the tube remaining on the ground.

"Missile-type rocket" means a device that is similar to a sky rocket in size, composition, and effect, and that uses fins rather than a stick for guidance and stability.

"Municipality" has the meaning set forth in IC 36-1-2-11.

"Party popper" means a small plastic or paper item containing not more than sixteen (16) milligrams of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.

"Person" means an individual, an association, an organization, a limited liability company, or a corporation.

"Pyrotechnic composition" means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. Pyrotechnic compositions will not explode upon ignition unless severely confined.

"Responding fire department" means the paid fire department or volunteer fire department that renders fire protection services to a

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1 political subdivision.

2 "Retail sales stand" means a temporary business site or location
3 where goods are to be sold.

4 "Retailer" means a person who purchases fireworks for resale to
5 consumers.

6 "Roman candle" means a device that consists of a heavy paper or
7 cardboard tube not exceeding three-eighths (3/8) inch in inside
8 diameter and that contains up to twenty (20) grams of pyrotechnic
9 composition. Upon ignition, up to ten (10) stars (pellets of pressed
10 pyrotechnic composition that burn with bright color) are individually
11 expelled at several second intervals.

12 "Sky rocket" means a device that:

- 13 (1) consists of a tube that contains pyrotechnic composition;
14 (2) contains a stick for guidance and stability; and
15 (3) rises into the air upon ignition, producing a burst of color or
16 noise at the height of flight.

17 "Smoke device" means a tube or sphere containing pyrotechnic
18 composition that produces white or colored smoke upon ignition as the
19 primary effect.

20 "Snake" or "glow worm" means a pressed pellet of pyrotechnic
21 composition that produces a large, snake-like ash upon burning. The
22 ash expands in length as the pellet burns. These devices do not contain
23 mercuric thiocyanate.

24 "Snapper" means a small, paper wrapped item containing a minute
25 quantity of explosive composition coated on small bits of sand. When
26 dropped, the device explodes, producing a small report.

27 "Special discharge location" means a location designated for the
28 discharge of consumer fireworks by individuals in accordance with
29 rules adopted under section 3.5 of this chapter.

30 "Special fireworks" means fireworks designed primarily to produce
31 visible or audible effects by combustion, deflagration, or detonation,
32 including firecrackers containing more than one hundred thirty (130)
33 milligrams of explosive composition, aerial shells containing more than
34 forty (40) grams of pyrotechnic composition, and other exhibition
35 display items that exceed the limits for classification as consumer
36 fireworks.

37 "Trick match" means a kitchen or book match that has been coated
38 with a small quantity of explosive or pyrotechnic composition. Upon
39 ignition of the match, a small report or a shower of sparks is produced.

40 "Trick noisemaker" means an item that produces a small report
41 intended to surprise the user.

42 "Wheel" means a pyrotechnic device that:

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- (1) is attached to a post or tree by means of a nail or string;
- (2) contains up to six (6) driver units (tubes not exceeding one-half (1/2) inch in inside diameter) containing up to sixty (60) grams of composition per driver unit; and
- (3) revolves, upon ignition, producing a shower of color and sparks and sometimes a whistling effect.

"Wholesaler" means a person who purchases fireworks for resale to retailers.

SECTION 2. IC 22-11-14-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10.5. (a) As used in this section, "fireworks use ordinance" means an ordinance that regulates any of the following:**

- (1) The days and hours when consumer fireworks may be used, ignited, or discharged.
- (2) The locations where consumer fireworks may be used, ignited, or discharged.

(b) Notwithstanding any other provision of this chapter:

- (1) a county may adopt a fireworks use ordinance covering the unincorporated areas of the county; and
- (2) a municipality may adopt a fireworks use ordinance covering the area within the corporate limits of the municipality.

(c) A fireworks use ordinance:

- (1) may limit the use of fireworks:
 - (A) in the unincorporated areas of the county if adopted by a county; and
 - (B) in the municipality if adopted by a municipality;
- (2) may not be more lenient than a rule adopted by a state agency concerning the use of fireworks; and
- (3) may not limit the use of fireworks:
 - (A) between the hours of 5 p.m. and 11 p.m. on July 2, July 3, July 5, July 6, and July 7;
 - (B) between the hours of 10 a.m. and midnight on July 4;
 - (C) between the hours of 10 a.m. on December 31 and 1 a.m. on January 1; and
 - (D) between the hours of 10 a.m. and 11 p.m. on January 1.

(d) The power to enforce a noise ordinance by a county or a municipality is not affected by the county's or municipality's action or lack of action under this section.

SECTION 3. IC 22-11-14-12, AS ADDED BY P.L.187-2006,

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SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) A user fee, known as the public safety fee, is imposed on retail transactions made in Indiana of fireworks, in accordance with section 13 of this chapter.

(b) A person who acquires fireworks in a retail transaction is liable for the public safety fee on the transaction and, except as otherwise provided in this chapter, shall pay the public safety fee to the retailer as a separate added amount to the consideration in the transaction. The retailer shall collect the public safety fee as an agent for the state.

(c) The public safety fee shall be deposited in the state general fund.

(d) The department of state revenue shall adopt rules under IC 4-22-2 necessary for the collection of the public safety fee monies from retailers as described in subsections (b) and (c).

(e) An amount equal to the amount of the public safety fees collected under this section is continuously appropriated from the state general fund to the department of homeland security for the following purposes:

(1) On June 30 of each year, the department of homeland security shall pay to each volunteer fire department (as defined in IC 36-8-12-2) an amount equal to fifty percent (50%) of the amount appropriated under this subsection divided by the number of volunteer fire departments in Indiana.

(2) The department of homeland security shall use twenty-five percent (25%) of the amount appropriated under this subsection for public safety service providers or advanced training programs.

(3) The department of homeland security shall use twenty-five percent (25%) of the amount appropriated under this subsection for the following purposes, at the discretion of the executive director of the department of homeland security:

(A) For deposit in the state disaster relief fund established by IC 10-14-4-5. The amount deposited under this clause shall be used to pay for damage resulting from a disaster (as defined in IC 10-14-3-1) to a public facility (as defined in IC 10-14-4-4) owned by, maintained by, or operated by or on behalf of an eligible entity (as defined in IC 10-14-4-2), in accordance with IC 10-14-4.

(B) To defray:

(i) the costs of response;

(ii) the costs of recovery; or

(iii) the twenty-five percent (25%) of the costs required

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1 to be paid by local jurisdictions;
2 that accrue because of a disaster that is the subject of a
3 disaster declaration by the federal government.
4 SECTION 4. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Mrvan be added as coauthor of Senate Bill 9.

HEINOLD

SENATE MOTION

Madam President: I move that Senator Zakas be added as coauthor of Senate Bill 9.

HEINOLD

SENATE MOTION

Madam President: I move that Senator Becker be removed as second author of Senate Bill 9.

BECKER

SENATE MOTION

Madam President: I move that Senator Hershman be removed as third author of Senate Bill 9.

HERSHMAN

SENATE MOTION

Madam President: I move that Senator Landske be added as second author, Senator Becker be added as third author, and Senator Hershman be added as coauthor of Senate Bill 9.

HEINOLD

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SENATE MOTION

Madam President: I move that Senator Broden be added as coauthor of Senate Bill 9.

HEINOLD

SENATE MOTION

Madam President: I move that Senator Lanane be added as coauthor of Senate Bill 9.

HEINOLD

COMMITTEE REPORT

Madam President: The Senate Committee on Local Government and Elections, to which was referred Senate Bill No. 9, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, line 23, delete "and".

Page 6, line 25, delete "." and insert "; and".

Page 6, between lines 25 and 26, begin a new line block indented and insert:

"(3) may not totally ban the use of fireworks on July 3, July 4, or December 31."

and when so amended that said bill do pass.

(Reference is to SB 9 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 9, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 9 be amended to read as follows:

Page 6, delete lines 9 through 27, begin a new paragraph and insert:

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"SECTION 2. IC 22-11-14-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10.5 (a) As used in this section, the term "use" means the ability of a county or municipality to regulate the days and hours when consumer fireworks may be used, ignited or discharged.**

(b) Notwithstanding any other provision of this chapter:

- (1) a county may adopt an ordinance concerning the use of fireworks in the unincorporated areas of the county; and**
- (2) a municipality may adopt an ordinance concerning the use of fireworks within the corporate limits of the municipality.**

(c) An ordinance adopted under this section:

- (1) may limit the use of fireworks in the county or municipality;**
- (2) may not be more lenient than a rule adopted by a state agency concerning the use of fireworks; and**
- (3) may not limit the use of fireworks:**
 - (A) between the hours of 5:00 p.m. and two hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8 and July 9;**
 - (B) between the hours of 10:00 a.m. and 12:00 midnight on July 4; and**
 - (C) between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1."**

(Reference is to SB 9 as printed January 26, 2007.)

WEATHERWAX

COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred Senate Bill 9, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, delete lines 9 through 33, begin a new paragraph and insert:

"SECTION 2. IC 22-11-14-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10.5. (a) As used in this section, "fireworks use ordinance" means an ordinance that**

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regulates any of the following:

- (1) The days and hours when consumer fireworks may be used, ignited, or discharged.
- (2) The locations where consumer fireworks may be used, ignited, or discharged.

(b) Notwithstanding any other provision of this chapter:

- (1) a county may adopt a fireworks use ordinance covering the unincorporated areas of the county; and
- (2) a municipality may adopt a fireworks use ordinance covering the area within the corporate limits of the municipality.

(c) A fireworks use ordinance:

- (1) may limit the use of fireworks:
 - (A) in the unincorporated areas of the county if adopted by a county; and
 - (B) in the municipality if adopted by a municipality;
- (2) may not be more lenient than a rule adopted by a state agency concerning the use of fireworks; and
- (3) may not limit the use of fireworks:
 - (A) between the hours of 5 p.m. and 11 p.m. on July 2, July 3, July 5, July 6, and July 7;
 - (B) between the hours of 10 a.m. and midnight on July 4;
 - (C) between the hours of 10 a.m. on December 31 and 1 a.m. on January 1; and
 - (D) between the hours of 10 a.m. and 11 p.m. on January 1.

(d) The power to enforce a noise ordinance by a county or a municipality is not affected by the county's or municipality's action or lack of action under this section."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 9 as reprinted February 7, 2007.)

SMITH V, Chair

Committee Vote: yeas 9, nays 3.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 9 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety and to make an appropriation.

Page 6, between lines 41 and 42, begin a new paragraph and insert:

"SECTION 3. IC 22-11-14-12, AS ADDED BY P.L.187-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) A user fee, known as the public safety fee, is imposed on retail transactions made in Indiana of fireworks, in accordance with section 13 of this chapter.

(b) A person who acquires fireworks in a retail transaction is liable for the public safety fee on the transaction and, except as otherwise provided in this chapter, shall pay the public safety fee to the retailer as a separate added amount to the consideration in the transaction. The retailer shall collect the public safety fee as an agent for the state.

(c) The public safety fee shall be deposited in the state general fund.

(d) The department of state revenue shall adopt rules under IC 4-22-2 necessary for the collection of the public safety fee monies from retailers as described in subsections (b) and (c).

(e) An amount equal to the amount of the public safety fees collected under this section is continuously appropriated from the state general fund to the department of homeland security for the following purposes:

(1) On June 30 of each year, the department of homeland security shall pay to each volunteer fire department (as defined in IC 36-8-12-2) an amount equal to fifty percent (50%) of the amount appropriated under this subsection divided by the number of volunteer fire departments in Indiana.

(2) The department of homeland security shall use twenty-five percent (25%) of the amount appropriated under this subsection for public safety service providers or advanced training programs.

(3) The department of homeland security shall use twenty-five percent (25%) of the amount appropriated under this subsection for the following purposes, at the discretion of the executive director of the department of homeland security:

(A) For deposit in the state disaster relief fund established by IC 10-14-4-5. The amount deposited under this clause shall be used to pay for damage resulting from a disaster

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(as defined in IC 10-14-3-1) to a public facility (as defined in IC 10-14-4-4) owned by, maintained by, or operated by or on behalf of an eligible entity (as defined in IC 10-14-4-2), in accordance with IC 10-14-4.

(B) To defray:

- (i) the costs of response;
- (ii) the costs of recovery; or
- (iii) the twenty-five percent (25%) of the costs required to be paid by local jurisdictions;

that accrue because of a disaster that is the subject of a disaster declaration by the federal government."

Renumber all SECTIONS consecutively.

(Reference is to ESB 9 as printed March 27, 2007.)

CROOKS

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